PB-217 599

# DIGEST OF WATER POLLUTION CONTROL LEGISLATION ... KANSAS

Public Health Service
Washington, D. C.

September 1958

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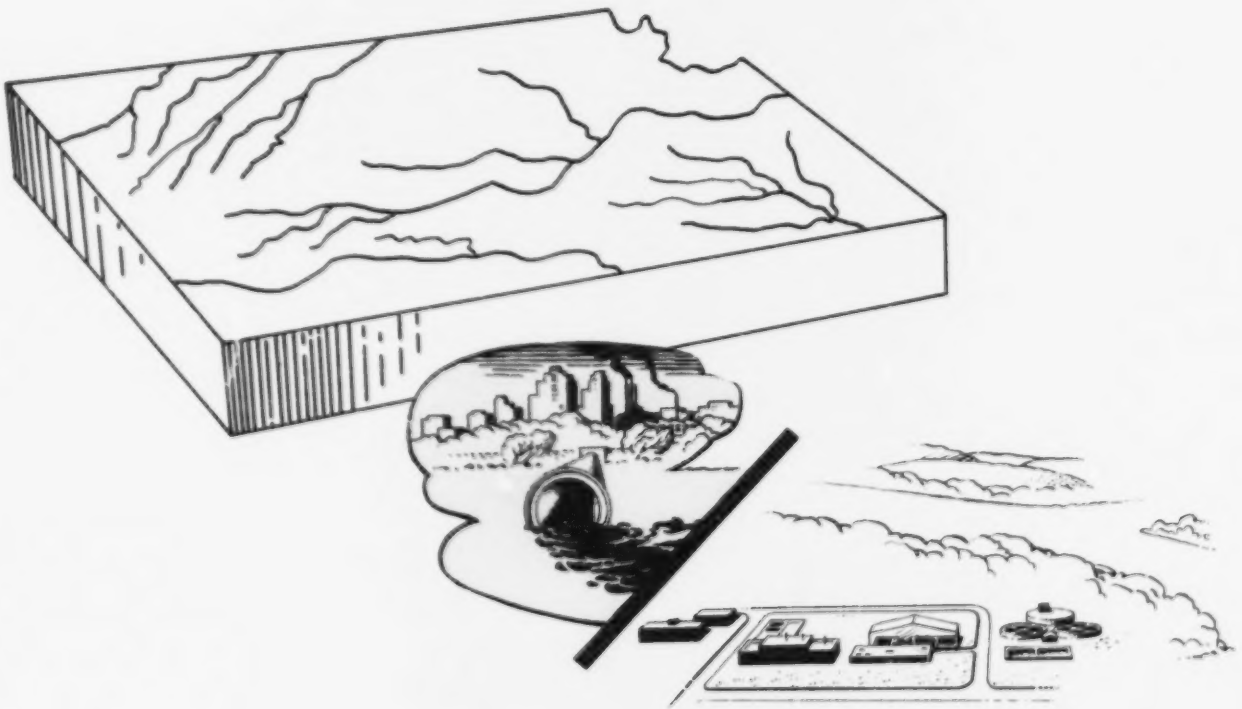

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Public Health Service

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Section 3 of the Federal Water Pollution Control Act (33 U.S.C. 466b) directs the Public Health Service to "encourage the enactment of improved and, so far as practicable, uniform State laws relating to the prevention and control of water pollution."

This Digest is one of a series prepared by the Public Health Service as a service to the States and others interested in these objectives. Cooperation of State officials in the preparation of these digests is gratefully acknowledged.

September 1958

# DIGEST OF KANSAS WATER POLLUTION CONTROL LEGISLATION

## I. GENERAL STATEMENT

The State Board of Health has the primary function of controlling water pollution. The Board is authorized to make rules and regulations necessary for the protection of the surface and subsurface water from pollution by oil, gas, salt water injection wells, or underground storage reservoirs, and to govern the disposal of domestic, industrial and sewage wastes by municipalities, corporations, companies, or individuals, as well as for the collection of samples and analysis of water furnished by anyone to the public. The analysis is made at the Water and Sewage Laboratory of the Board in the University of Kansas (1955 Supp., sec. 65-171d (as amended by Ch. 333, Laws of 1957; secs. 65-156, 65-157)[1/].

The Board is also empowered to publish approved minimum standards of design, construction, and maintenance of sanitary water and sewage systems (1955 Supp., sec. 65-171h).

The State Water Resources Board, among other things, is authorized to work out a plan of water resources development for each watershed in the State, and cooperate with any agency of the State or Federal Government developing plans affecting any watershed of the State; review plans for the development, management, and use of the water resources of the State by any State or local agency; make a study of the laws of the State, the other States, and of the Federal Government relating to conservation and development of water resources, stream control, watershed development, flood control and stream pollution to determine the necessity or advisability of the enactment of new or amendatory legislation in the State on such subjects (1955 Supp., sec. 74-2608).

1/ Citations in this digest refer to the General Statutes of Kansas Annotated (1949), and the 1955 Supplement thereto, unless otherwise noted.

## II. ADMINISTRATIVE ORGANIZATION

### State Board of Health

#### 1. Composition and organization

The Board is composed of ten members appointed by the Governor for 3-year terms; five of whom must be licensed to practice medicine, one a licensed pharmacist, one a licensed dentist, one a licensed veterinarian, one a hospital administrator, and one a sanitary engineer. The Board elects one of its members as President, and it also elects a Secretary who may be a member of the Board. The Board makes and publishes such rules as are necessary for the conduct of its business. The Board meets quarterly and oftener if necessary, and its annual meeting is held in June of each year at Topeka. A majority of the members of the Board constitutes a quorum for the transaction of business (1955 Supp., secs. 74-901, 74-902). The Secretary of the Board is the State Health Officer and he directs the actions of all divisions and sections of the State Board of Health (1955 Supp., sec. 75-3153).

#### 2. Powers and duties

##### a) General authority

The Board has general supervision of the health of the people of the State. It makes sanitary investigations and inspections and advises other State officers and boards in regard to the location, drainage, water supply, disposal of excreta, heating and ventilation of public buildings. It has power to investigate nuisances and abate the same (Secs. 65-101, 65-159).

##### b) Issuance of permits and review of plans and specifications

Suppliers of water to the public must file with the Board a certified copy of the plans and surveys of the waterworks with a description of the

source from which the water supply is derived. No additional source of supply may be used without a written permit from the Board (Sec. 65-162). Suppliers of water to the public for domestic purposes by means of any waterworks must secure a written permit from the Board. The application must be accompanied by a certified copy of the maps, plans and specifications for the construction of such waterworks or extension, a description of the water source, and the manner of storage or treatment proposed, together with such other information as required by the Board (Sec. 65-163).

A permit from the Board is required for anyone to establish or maintain any cross-connection between any public and any private water system (Sec. 65-163b).

A permit for the discharge of sewage into the waters of the State[2/] may be secured by a sewerage company or a public authority when it is the unanimous opinion of the Governor, the Attorney General and the Secretary of the Board that the general interests of the public health would be served thereby. Every such permit is revocable or subject to modification by the Board after due notice, investigation, and hearing. The permit may contain conditions for such discharge (Sec. 65-165).

Plans and specifications for disposal works for oil-field or gas-field brines and mineralized water must be approved by the Board and the State Corporation Commission. The Board approves from the standpoint of water pollution and the Commission from the standpoint of loss or waste (Sec. 55-1003).

A permit from the Board is required for the storage or disposal of salt water, oil or refuse in surface ponds; if such storage is likely to cause pollution the Board may deny or revoke a permit (1955 Supp., sec. 65-171d (as amended by Ch. 333, Laws of 1957)).

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2/ "Waters of the State" includes all streams and springs, and all bodies of surface and of impounded ground water, whether natural or artificial, within the boundaries of the State (Sec. 65-161).

c) Enforcement

Upon complaint that the waters of the State are being polluted, or on its own motion, the Board is authorized to make an investigation and if it finds that the waters are being polluted in a manner prejudicial to the health of any of the inhabitants it may make an order requiring such pollution to cease within a reasonable time, or requiring such treatment or disposition of the polluting material as may be necessary to prevent the future pollution of such waters. The aggrieved party may, within 30 days from the date of the order, appeal to the district court of the county in which the pollution exists, and the Court may set aside or modify the order or it may fix the terms upon which a permit is to be granted and stating the reasons therefor (Sec. 65-164).

Whenever the Board or its duly authorized agent finds that the surface or subsurface water is not being protected from pollution by oil, gas, salt water injection wells, or underground storage reservoirs, or that storage or disposal of salt water, oil or refuse in any surface pond is causing or is likely to cause pollution, the Executive Secretary or his agent issues an order prohibiting their operation. This order takes effect 10 days after service upon the owner, operator, contractor or agent. Persons aggrieved by such order may request a hearing thereon within 10 days of service (1955 Supp., sec. 65-171d (as amended by Ch. 333, Laws of 1957)).

The Board, Executive Secretary or a hearing officer may conduct the hearings. On the basis of the evidence produced at the hearing, the Board makes findings of fact and conclusions of law and gives written notice of such to the alleged violator. The order of the Board is final unless appealed to the courts within 30 days from its issue (Ibid).

An appeal may be taken by an aggrieved party from a final order of the Board to the District Court of the county of residence of the appellant. Notic of appeal from a final order must be served on the Board through its Executive Secretary. Failure to serve such a notice of appeal within 30 days operates as a waiver of the right of appeal. A copy of the notice of appeal with proof of service on the Executive Secretary must be filed by the appellant with the Clerk of the Court within 10 days of the service of the notice, and thereupon the Court takes jurisdiction. The service of the notice of appeal does not operate as a stay, but the appellant can apply to the Board for a stay which the Board may grant at its discretion. Upon receipt of the notice of appeal the Executive Secretary must, within 15 days, file with the Clerk of the District Court a certified transcript of all the proceedings relating to the order appealed from. The review is conducted by the Court de novo without a jury. The Court may affirm, modify or reverse the order of the Board. Appeals from the decision of the District Court may be taken to the Supreme Court as in other civil cases (Ibid).

Anyone who supplies water to the public for domestic purposes by means of any waterworks without a permit from the Board is guilty of a misdemeanor (Sec. 65-163).

The Board may order the cessation of the delivery of water through pipes and mains to any premises where any condition exists that might lead to the contamination of the public water supply. When such an order is made, the delivery of water must immediately cease until the danger of contamination is eliminated (65-163a).

It is unlawful to discharge sewage from any public sewer system into the waters of the State without a duly issued permit, in any case in which a permit is required (Sec. 65-167).

Anyone who fails to furnish, on demand, information as required by the Board is guilty of a misdemeanor (Sec. 65-169).

It is unlawful for anyone to fail to comply with the rules, regulations, or orders of the Board relating to water pollution (Sec. 65-171f).

d) Conduct of studies, investigations and research

The Board is authorized to investigate the sanitary quality of water supplied for domestic or drinking purposes (Sec. 65-163).

The Board is authorized to make analysis of water at its Water and Sewage Laboratory in the University of Kansas (Sec. 65-157).

The Engineer of the Board investigates and reports upon all matters relating to water supply, sewerage, and the pollution of the waters of the State, that may be the subject of investigation or action by the Board (Sec. 65-170).

e) Cooperation with other public and private agencies

The Board is authorized to receive grants of money and funds appropriated under any Federal Act (Sec. 65-103a).

f) Administrative powers

The Board is authorized to make rules and regulations, hold hearings, issue orders and permits (1955 Supp., secs. 74-902, 65-171d; secs. 65-163, 65-164, 65-165).

The Board is authorized to appoint or employ such technical advisers as may be necessary in carrying out the provisions of the Act (Sec. 65-171c).

The Secretary and/or the Engineer of the Board are empowered to act for the Board when it is not in session, and their decisions have the same force and effect as though made by the Board when confirmed by the Governor and the Attorney General (Sec. 65-170). The Board may delegate its duties, in writing, to any of its agencies, sections or divisions (Sec. 65-171e).

3. Exemption from operation of Act

The discharge of sewage from any public sewer system owned and maintained by a municipality or sewerage company is permitted if such system was in operation and discharging sewage into the water of the State on March 20, 1907. This exemption does not permit the discharge of sewage from any sewer system that has been extended subsequent to such date nor does it permit the discharge of any sewage which upon investigation by the Board is found to be polluting the waters of the State in a manner prejudicial to the Health of the inhabitants (Sec. 65-164). Also, all individuals and private corporations and companies who were discharging sewage on March 20, 1907, into the waters of the State may continue such discharge unless in the opinion of the Board such sewage becomes injurious to public health (Sec. 65-168).

III. MISCELLANEOUS STATUTORY PROVISIONS RELATING TO WATER POLLUTION

It is unlawful for anyone to permit salt water, oil or refuse from any well to escape by overflow, seepage or otherwise (1955 Supp., sec. 55-121). Before abandoning any well drilled for gas or oil, it is the duty of the owner or operator to shut off and exclude all water from entering oil-bearing or gas-bearing sand, strata, or formation encountered in the well and to use every effort to protect any underground or surface water suitable for domestic or irrigation purposes from infiltration or addition of any detrimental substances, in accordance with methods, rules and regulations adopted and promulgated by the State Corporation Commission and under its direction (1955 Supp., sec. 55-128).

It is unlawful for anyone who disposes below the surface of the earth, salt water, mineralized brine, oil, or refuse produced from any

oil well, to dispose of same at a pressure in excess of the maximum pressure established by the State Board of Health. Violation is a misdemeanor (1955 Supp., sec. 55-1004).

Operators of oil or gas wells producing salt water or waters containing minerals in an appreciable degree have the right to return said waters to any horizon from which produced or to any other horizon which contains or had previously produced salt water, provided they have received approval to do so from the State Corporation Commission. Violation is a misdemeanor (Secs. 55-901, 55-902).

It is unlawful to wilfully poison any spring, well or reservoir of water (Sec. 21-433).

It is unlawful for the purpose of taking or killing fish for anyone to place in any waters of the State any deleterious substance or any explosives. Violation is a misdemeanor (Secs. 32-135, 32-135a).